

<b>Department of Social Services</b> <b>Division of Licensing Programs</b>  <b>STANDARD</b> <b>OPERATING</b> <b>PROCEDURE</b>	<b>TITLE:</b>  <b>COMPLAINTS</b>	<b>PROCEDURE NUMBER SOP-401</b>
		<b>EFFECTIVE DATE: September 29, 2005</b>
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**401-1.0 PURPOSE:**

To establish standardized operating procedures for responding to complaints about adult and children's facilities/programs.

**401-2.0 SCOPE:**

This standard operating procedure applies to licensing office staff, as well as central office staff assigned to answer and maintain the toll-free phone line, as they receive information from complainants. It also outlines procedures for licensing representatives to conduct complaint investigations.

**401-3.0 DEFINITIONS:**

Adverse Enforcement: Imposition of sanctions or actions by the commissioner or the director of the Division for providers that violate laws and/or regulations in ways that negatively impact the health, safety, or welfare of children or adults in the care of facilities regulated by the Division of Licensing Programs (DOLP).

Collateral witness: Any individual who, though not identified in the complaint as being directly involved, may have information that could confirm or refute the allegations from the complainant.

Complaint: An accusation that a facility/program is operating without a license or a licensed facility/program is not in compliance with licensing standards or statute, or that the children/adults in the care of a licensed facility/program are being abused, neglected, or exploited.

Corrective action plan: A written proposal, composed by a licensee in response to a corrective action notice from DOLP staff, in which the licensee identifies systemic roots of noncompliance with standards or statutes and develops a strategy for bringing a facility/program into compliance within an established period of time.

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**DOLPHIN (Division Of Licensing Programs Help and Information Network):**  
The Division's data system that manages information about applicants and licensed providers and serves as a tool for the work of licensing staff.

**Illegal operations** (a.k.a. "unlicensed activity" or "unlicensed facility"): Adult or children's facilities/programs subject to licensure that are operating without a license.

**Inspection summary:** A form generated by DOLPHIN that includes information about the areas of standards reviewed during the visit, any technical assistance provided by the licensing representative to facility/program staff, comments and discussion, and whether any violation notices were issued at the conclusion of the inspection.

**Licensing representative:** This usually refers to the staff delegated to provide ongoing regulatory oversight for a facility by the appropriate licensing office or unit. With proper designation by the licensing administrator or division management, however, staffs conducting such regulatory activities may be: staffs who perform similar functions for other facilities or licensing offices; a member of the division's central staff; or, a non-VDSS employee approved by the commissioner or division director.

**Valid (opposite, "not valid"; previously "founded" [opposite, "unfounded"]):**  
When a licensing representative determines that a facility, by preponderance of the evidence gathered through an investigation, is out of compliance with the standard(s) or statute(s) referenced in a complaint.

**Violation notice:** A form generated by DOLPHIN following an on-site visit when a licensee is found to be out of compliance with one or more standards or statutes. The form specifies the type of visit/study, the code section for the violated standard(s) or statute(s), how the standard(s) or statute(s) was violated, and a description of (preventative) action to be taken on the part of the applicant/licensee.

#### **401-4.0**

#### **PROCEDURES:**

The central office will maintain a toll-free number for receiving complaints and licensing offices will follow standard procedures for collecting, processing, and investigating complaints about adult and children's facilities/programs. DOLP

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staff will respond to complaints it deems to be valid by taking measures to reduce the risk of repeated violations by the licensee.

401-4.1 Receipt of Complaint:

401-4.1.1 Initial Contact with Complainant

1. The central office program support technician assigned to maintain and receive calls from the Division's toll-free line shall gather as much information as possible from the complainant using the DOLP complaint form. (See Appendix A) If this is not possible the tech shall give to complainants contact information for the appropriate licensing office, based on the location of the facility/program mentioned in the complaint.

NOTE: When the central office receives information from a complainant through letter, fax, or email, the program support technician shall immediately forward such information to the appropriate licensing office.

2. The licensing administrator, licensing representative, or licensing technician who receives a complaint shall gather as much information as possible from the complainant using the DOLP complaint form. (See Appendix A)
3. The licensing office shall keep a hard copy of the complaint form in the licensing file for the facility/program.

401-4.1.2 Processing the Complaint

1. The licensing office shall orally notify Adult Protective Services (APS), Child Protective Services (CPS), and/or law enforcement when the information in the complaint indicates the possibility of abuse/neglect of an adult/child or criminal activity, and shall notify any other appropriate licensing authorities.
2. The licensing administrator shall establish a case assignment protocol in the licensing office to ensure prompt and thorough investigation of complaints.
  - a. The licensing office shall investigate complaints about any facility recommended for denial or revocation of license (see SOP-501 [Adverse Enforcement Actions]) until it is clear that there will be no appeal of the sanction or that the licensee has exhausted unsuccessfully all opportunities to appeal the decision to deny or revoke the license.

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- b. The licensing office shall investigate complaints relating to unlicensed or exempt facilities. (See SOP-402 [Suppression of Illegal Operations], SOP-601 [Religiously Exempt Programs], SOP-604 [Evaluating for the “Come and Go” Exemption].)

401-4.2 Investigation of Complaint:

401-4.2.1 Joint Investigations

1. The licensing representative assigned to the complaint shall contact the lead investigator from APS, CPS, and/or law enforcement to plan for and schedule a joint investigation when the complainant alleges that abuse or neglect occurred.
2. The licensing representative shall contact and conduct joint investigations as necessary with the ombudsman, health department specialist, fire marshal, and/or building inspector.
3. The licensing representative shall share with and may receive from APS, CPS, law enforcement, the ombudsman, the health department, the fire marshal, and the building inspector information that could be helpful in determining the validity of the complaint.

401-4.2.2 On-site Inspection

1. The licensing representative shall, with rare exceptions, initiate the investigation with the licensee an unannounced inspection to the facility/program.
2. The licensing representative shall visit the facility/program that is the subject of the complaint in order to:
  - a. Observe the facility and staff interaction with persons in care;
  - b. Interview residents/participants and staff who may have knowledge about the allegations in the complaint;
  - c. Review reports and records; and

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- d. Obtain any documentation that may help confirm or refute the allegations in the complaint.
3. The licensing representative shall not reveal the identity of the complainant to the public or the facility/program unless disclosure is court ordered.
4. DOLP staff shall take the following steps when a facility/program refuses entry to a licensing representative who is attempting to conduct a complaint investigation: (NOTE: For complaint investigations relating to unlicensed or exempt facilities see SOPs 402, 601, and 604.)
  - a. The licensing representative shall notify the licensing administrator with details about statements made and actions taken (or inaction) by the licensee.
  - b. The licensing administrator shall notify the adverse enforcement consultant and operations manager and discuss options for resolution.
  - c. The adverse enforcement consultant shall recommend and initiate a course of action that may include:
    - Drafting correspondence to the licensee;
    - Initiating a request for an injunction; and/or
    - Filing a criminal warrant for violation of *Code of Virginia* § 63.2-1712.
  - d. The timeframes for actions described in a-c above shall vary according to the severity of the situation.

NOTE: The response should be immediate for circumstances of extreme risk, in which the licensing representative should normally also contact law enforcement and/or emergency medical personnel.

#### 401-4.2.3 Collateral Contacts

1. The licensing representative shall make collateral contacts as necessary in person or by telephone with individuals who may have information of value to the complaint investigation.

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2. The licensing representative shall not reveal the identity of the complainant to the collateral witness(es).
3. The licensing representative shall not reveal the identity of the collateral witness if such disclosure may endanger the individual's health or safety.

#### 401-4.2.4 Timeframes

1. The licensing representative shall begin the investigation no later than 10 calendar days following the receipt of the complaint.
2. The licensing representative shall begin the investigation no later than 5 calendar days following the receipt of the complaint if the allegation contains accusations of abuse/neglect or risk to the life, health or safety of children or adults in care.
3. The licensing representative shall complete the investigation no later than 30 calendar days following the receipt of the complaint.
4. The licensing representative shall notify the licensing administrator and document in DOLPHIN the reason for the delay of any investigation that is expected to go beyond the timeframes established in this section (4.2.4).

NOTE: Waiting for a notification from another agency about its finding/determination on the case is not a legitimate reason for delaying beyond the established timeframes. The licensing administrator may, however, under unusual circumstances approve an additional 10 days for the licensing representative to complete a complaint investigation.

#### 401-4.3 Case Determination and Response:

1. The licensing representative shall determine, based on the preponderance of the evidence gathered during an investigation, whether a complaint is "valid" or "not valid."
  - a. The licensing representative shall consider a complaint "valid" when at least 51% of the evidence supports the allegation(s) and "not valid" when less than 51% of the evidence supports it.

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- b. The licensing representative shall discuss the investigation as necessary with the licensing administrator or the adverse enforcement consultant for assistance in weighing the evidence for a determination.
  2. The licensing representative shall complete in DOLPHIN at the end of each complaint investigation an inspection summary (see examples in Appendix B ["valid"] and Appendix C ["not valid"]), as well as a violation notice when either the complaint is valid or other violations are discovered during the course of the investigation.
    - a. The licensing representative shall follow procedures established in section 4.3 of SOP-304 (Violation Notices and Inspection Summaries) and shall:
      - Display in the "Areas of Standards Reviewed" section of the inspection summary the dates when the investigation was both initiated and completed;
      - Indicate in the "Comments/Discussion" section of the inspection summary the case determination of either "valid" or "not valid;" and
      - Issue a violation notice for valid complaints at the same time he or she delivers the inspection summary, which indicates the case determination for the complaint.

NOTE: The licensing representative may issue a violation notice at the end of the initial inspection, regardless of whether he or she can make the case determination at that point, when there are violations outside of the allegations in the complaint that need to be addressed immediately.

- b. The licensing representative shall not list names of staff, witnesses, and victim(s) in the sections of DOLPHIN that are linked and posted on the Virginia Department of Social Services public web site.
        - c. The licensing representative shall make a notation of "self-reported" on the "Comments/Discussion" section of the inspection summary when the source of the information in a complaint is the licensee (or designee).

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NOTE: The fact that the licensee (or designee) notifies the licensing representative about any non-compliance, that is, “self-reports” a complaint, should not have a bearing on the outcome of the investigation. When the complainant is a staff member who has concerns about a facility/program, the complaint should not be considered “self-reported.”

3. The licensing representative shall determine an appropriate response for dealing with violations discovered in the course of a complaint investigation that may include:
  - a. Requesting a “description of action to be taken” from the licensee for any valid complaints (see SOP-304);
  - b. Issuing a corrective action notice requiring the licensee to submit a corrective action plan (see SOP-305 [Corrective Action Notices and Plans]);
  - c. Initiating an adverse enforcement action for serious or repeated violations (see SOP-501); and/or
  - d. Planning for follow-up visits to monitor the licensee’s progress (see SOP-301 [Conducting an Inspection] and SOP-306 [Enforcement Watch]).
4. The licensing representative shall provide notification about the outcome of the investigation to the:
  - a. Licensee – in the form of the inspection summary, regardless of whether the complaint is determined to be valid or not valid;

NOTE: The licensing representative shall complete an inspection summary (SOP-304) at the end of the initial inspection and a second inspection summary, which documents the determination on the complaint, once he or she has finished the investigation. If the licensing representative can make a determination by the end of the initial inspection, only one inspection summary is needed.



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- b. Complainant, if not anonymous – in the form of a letter (Appendix D [“valid”] and Appendix E [“not valid”]) indicating that the investigation has been completed and was determined to be valid or not valid;
- c. Investigator from APS, CPS, or law enforcement – upon request when there has been a joint investigation on the complaint;
- d. Long-term care ombudsman – when a complaint has been forwarded from the ombudsman’s office to the Division for investigation; and
- e. Party identified by the licensee – through signed letter or fax as someone who should also have access to information about the investigation and the determination. (*Occurs only at the request of the licensee.*)

**401-5.0      AUTHORITY:**

*Code of Virginia* § 63.2-101 (-102), 63.2-104 (-105), 63.2-1701, 63.2-1706, 63.2-1712, 63.2-1728 (-1731), 63.2-1736 (-1737); 22 VAC 40-80-290 (-320)

**401-6.0      RESPONSIBILITY:**

The assistant division director, operations manager, licensing administrators, licensing representatives, central office program support technicians, and licensing technicians shall be responsible for ensuring compliance with this standard operating procedure.

**401-7.0      INTERPRETATION:**

The director of the Division of Licensing Programs shall be responsible for interpreting or granting any exceptions to this standard operating procedure.

**401-8.0      SUPERSEDES:** First Issue; replaces PS (Policy Statement) 79-14, IPM (Internal Procedure Memorandum) 89-3, IPM 90-11, IPM 91-1, IPM 91-7, and part 6 of section I, chapter A of the DOLP Manual of Policy and Procedures.

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**401-9.0**      **EFFECTIVE DATE:** September 25, 2005

**401-10.0**      **REVIEW DATE:** Two years from the effective date.

Reviewed and Approved by:

Carolynne H. Stevens, Director    Date: September 25, 2005  
Division of Licensing Programs

## **Appendix A**

### **LICENSING COMPLAINT FORM**

**DATE OF COMPLAINT:**

**SOURCE:** \_\_\_\_phone, \_\_\_\_email, \_\_\_\_letter, \_\_\_\_fax

**COMPLAINANT INFORMATION:**

(If no name given, write "anonymous")

Name:

Address:

City, Zip:

Phone:

Relationship/Affiliation:

(resident, family member of resident, staff/employee, local DSS, other public agency)

**FACILITY:**

Name:

Address:

City, Zip:

Phone:

Complaint type: \_\_\_\_concern(s) about a licensed facility  
\_\_\_\_facility operating without a license ("illegal operation")

**SPECIFICS ABOUT COMPLAINT:**

Who was involved? (Get contact [phone, address] and identifying information [gender, age, role in complaint]. If no name, get physical description)

Who witnessed it and who may have secondary or background information? (Get contact information)

What happened (or did not happen)?

What is the severity of the injuries, if any injuries were sustained?

What is the condition of the (other) residents/participants?

When did the incident occur? (Get specific date[s], day[s] of week, and time[s])

Where did the incident occur? (inside, outside, which building[s], which room[s])

How often has this occurred?

How does the complainant know about this incident or issue?

Appendix B  
**INSPECTION SUMMARY**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

DIVISION OF LICENSING PROGRAMS

Inspect. Type: Initial Renewal Monitoring ☒ **Complaint** ☐ **Train/Consult** ☐ **Other** ☐ **Announced** ☒ **Unannounced**  
Name of Facility: Shiny Goldy Child Care Center **Inspection**

**Areas of Standards Reviewed:**

22VAC15-30 – V. Staffing & Supervision  
22VAC15-30 – VI. Programs

A complaint investigation was initiated on 8/15/05 and completed on 8/26/05 regarding an allegation that a child was roughly handled and struck by a staff member who was attempting to restrain him.

**Date:** August 15 & 17, 2005

**Technical Assistance Provided:**

As a reminder, it is forbidden to physically restrain a child in a child day center. In the extreme circumstance when a child's behavior would warrant such an action, due to the child posing a danger to himself or others, the least restrictive measures must be used. Such an incident should be thoroughly documented and immediately reported to the child's parent or guardian. How to handle these situations should be spelled out, and reinforced through staff training, in your center's policy and procedures.

**Comments/Discussion:**

The licensing inspector conducted an unannounced complaint inspection in response to a complaint that was received by the licensing office on 8/11/05. Interviews were conducted with children and staff relating to allegations that a staff member restrained and failed to protect a child in care. The preponderance of the evidence gathered during the investigation supports the allegations, so the complaint is determined to be valid. Please complete the columns for "description of action to be taken" and "date to be corrected" for each violation cited on the violation notice, and then return a signed and dated copy to the licensing office within 10 calendar days of receipt. If you have any questions, contact your licensing inspector at (123) 456-7890.

**Violation Notice Issued:**

☒ **Yes**

☐ **No**

\_\_\_\_\_  
**Signature of Licensing Representative**

\_\_\_\_\_  
**Signature of Facility Representative**

8/26/05  
**Date**

**032-05-035 (11/99)**

**Original: Case Record**

**Copy: Facility Representative**

## Appendix C

### INSPECTION SUMMARY

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

DIVISION OF LICENSING PROGRAMS

Inspect. Type: Initial Renewal Monitoring ☒ Complaint ☐ Train/Consult ☐ Other ☐ Announced ☒ Unannounced

**Areas of Standards Reviewed:**

22VAC15-30 – V. Staffing & Supervision

22VAC15-30 – VI. Programs

A complaint investigation was initiated on 8/15/05 and completed on 8/26/05 regarding an allegation of inappropriate discipline.

**Name of Facility:** Shiny Goldy Child Care Center

**Inspection Date:** August 15 & 17, 2005

**Technical Assistance Provided:**

None

**Comments/Discussion:**

The licensing inspector for Shiny Goldy Child Care Center conducted an unannounced complaint inspection in response to a complaint that was received by the licensing office on 8/11/05. Interviews were conducted with children and staff relating to the allegation of inappropriate discipline. The preponderance of the evidence gathered during the investigation does not support the allegation, so the complaint is determined to be "not valid." There are no violations resulting from this complaint investigation. If you have any questions, contact your licensing inspector at (123) 456-7890.

**Violation Notice Issued:** Yes ☐ No ☒

\_\_\_\_\_  
**Signature of Licensing Representative**

\_\_\_\_\_  
**Signature of Facility Representative**

8/26/05  
**Date**

032-05-035 (11/99)

Original: Case Record

Copy: Facility Representative

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## Appendix D

CHRISTOPHER H. FRACHER  
LICENSING ADMINISTRATOR



COMMONWEALTH of VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES

VERONA LICENSING OFFICE  
68 DICK HUFF LANE  
P.O. BOX 350  
VERONA, VIRGINIA 24482  
(540) 332-2330

September 9, 2005

Standar D. Watchdog  
12 Help St.  
Verona, VA 24482

Dear Mr. Watchdog:

Thank you for your concern about Shiny Goldy Child Care Center. We have completed our investigation and have determined by preponderance of the evidence that the allegations in the complaint are **valid**. You can view on the Virginia Department of Social Services web site, <http://www.dss.state.va.us/facility/search/licensed.cgi>, any violations that resulted from this investigation, as well as actions that will be taken by the provider to correct them.

Please contact me at (123) 456-7890 if you have any questions.

Sincerely,

Cody S. Goode  
Licensing Inspector

## Appendix E

CHRISTOPHER H. FRACHER  
LICENSING ADMINISTRATOR



COMMONWEALTH of VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES

VERONA LICENSING OFFICE  
68 DICK HUFF LANE  
P.O. BOX 350  
VERONA, VIRGINIA 24482  
(540) 332-2330

September 9, 2005

Standar D. Watchdog  
12 Help St.  
Verona, VA 24482

Dear Mr. Watchdog:

Thank you for your concern about Shiny Goldy Child Care Center. We have completed our investigation and have determined by preponderance of the evidence that the allegations in the complaint are ***not valid***. You can view on the Virginia Department of Social Services web site, <http://www.dss.state.va.us/facility/search/licensed.cgi>, whether any violations were cited outside of the allegations in this complaint, as well as actions that will be taken by the provider to correct them.

Please contact me at (123) 456-7890 if you have any questions.

Sincerely,

Cody S. Goode  
Licensing Inspector